



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

**TOPIC AND YEARLY INDICES OF
HEALTH CARE ANTITRUST ADVISORY OPINIONS
BY COMMISSION AND BY STAFF**

**Bureau of Competition
Federal Trade Commission**

October 16,1997

INTRODUCTION

The Federal Trade Commission will respond to requests for advice from health care providers and others through its advisory opinion process.¹ On September 27, 1994, the Commission and the Department of Justice jointly issued nine statements of antitrust enforcement policies and analytical principles regarding mergers and various joint activities in the health care area. In response to changes in the health care market, on August 28, 1996, the agencies issued revisions to statements eight and nine concerning physician network joint ventures and multiprovider networks.² The Commission will respond within 90 days to requests for advice about most matters addressed by the policy statements, and within 120 days to requests for advice regarding other non-merger health care matters.

¹ FTC Rules of Practice, § 1.1-1.4; 16 CFR § 1.1-1.4.

² Statements of Antitrust Enforcement Policy in Health Care, issued on August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶13,153 revised the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, issued on September 27, 1994, 4 Trade Reg. Rep. (CCH) ¶13,152. The 1994 statements revised and expanded the Department of Justice and Federal Trade Commission Antitrust Enforcement Policy Statements in the Health Care Area issued on September 15, 1993, 4 Trade Reg. Rep. (CCH) 113,151.

TOPIC INDEX OF HEALTH CARE ANTITRUST ADVISORY OPINIONS
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1. JOINT VENTURES

A. Provider Sponsored Networks

New Jersey Pharmacists Association, To Allen Nichol, Pharm. D.; August 12, 1997. (Pharmacist network offering health education and monitoring services to diabetes and asthma patients).

First Look, L. L.C., To James L. Wiant; June 19, 1997. (Network of optical firms organized to respond to requests for proposals for employer contracts for optical and vision services).

Yellowstone Physicians, L.L. C. To David V. Meany, Esq.; May 14, 1997. (Multispecialty physician network joint venture formed to contract with third party payers).

Ohio Ambulance Network. To Shawn M. Lyden, Esq.; January 23, 1997. (Network of ambulance and ambulette services providers formed to contract for transportation services with third party payers).

Mobile Health Resources. To John A. Cook, Esq.; January 23, 1997. (Network of ambulance companies formed to contract for transportation services with third party payers).

³ Advisory opinions are listed in more than one category when they discuss several issues. Commission advisory opinions are indicated by an asterisk (*); other opinions are staff advisory opinions. A yearly index follows this topic index. Copies of this index and the advisory opinions may be obtained from the Public Reference Section, Federal Trade Commission, Washington, D.C. 20580. The indices and advisory opinions issued since the 1993 Policy Statements are also available at the FTC's World Wide Web site at: <http://www.ftc.gov>. For additional information contact Judy Moreland at (202) 326-2776 or Mary Connelly-Draper at (202) 326-2760.

Southwest Florida Oral Surgery Associates. To Guy E. Whites man; December 2, 1996. (Cooperative of oral and maxillofacial surgery practices formed to jointly market services to third party payers).

Mayo Medical Laboratories. To George A. Cumming, Jr., Esq.; July 17, 1996. (State or regional networks of hospital laboratories providing outpatient laboratory services organized to compete for payer contracts).

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California Managed Imaging Medical Group, Inc. To J. Bert Morgan, Esq.; November 17, 1993. (Radiologist-owned PPO network to provide professional radiology services to payers on a regional or statewide basis; letter discusses fee-setting, market power, and limitation of provider panel).

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B. insurer/Third-Party-Payer Sponsored Preferred Provider Organizations

Association for Quality Health Care, Inc. To Cecil M. Cheves, Esq.; August 28, 1986. (Association of employers with self-funded health plans to negotiate with providers).

*Private **Healthcare** Systems.* To Michael L. Denger, Esq.; September 24, 1985. (Proposal by an insurer to develop a proprietary national network of managed health care systems and to function as a joint purchasing agent for commercial health insurers).

**Health Care Management Associates.* 101 F.T.C. 1014 (1983). To Irwin S. Smith, M. D., President; June 7, 1983. (PPO organized by an independent intermediary between physicians and payers).

c. Health Maintenance Organizations (HMOs)

*California **All Health**.* To William G. Kopit, Esq. and Clifford E. Barnes, Esq.; June 14, 1995. (Joint venture of six health maintenance organizations formed to bid for certain California Medicaid contracts).

Kitsap Physicians Service. To William G. Kopit, Esq.; May 22, 1984, and March 26, 1984. (Proposal by physician-owned IPA/HMO with most of the local physicians as participants to close off access to plan to new/additional physicians).

H/KIO/PA. To Gilbert M. Frimet, Esq.; March 22, 1984. (Use by IPA of fee schedule to allocate cavitation payment among participating

physicians; proposal to require exclusive dealing by IPA members with the IPA).

D. Group Purchasing

Association for Quality Health Care, Inc. To Cecil M. Cheves, Esq.; August 28, 1986. (Association of employers with self-funded health plans to negotiate with providers).

The Equitable Life Assurance Society. To Jonathan E. Gaines, Esq., V.P. and Counsel; March 26, 1986. (Insurer to enter into contracts with hospitals for DRG-based payment; prices would apply to insurer's own business and would be available to self-funded plans that contract with the insurer for that service).

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Louisiana Health Care Ass'n. To Steven E. Adams, J. D., Director of Governmental Relations; April 23, 1982. (Group purchasing agreement for nursing home association's members).

E. Hospital Joint Ventures

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Erlanger Medical Center/ Women's East Inc. To Carlos C. Smith, Esq. and Edward N. Boehm, Esq.; May 31, 1995. (Joint venture between two acute care hospitals for establishment of a new hospital specializing in obstetrical hospital services).

E/more Community Hospital, Inc. To Derrell O. Fancher; June 20, 1995. (Joint venture between two acute care hospitals for the purchase of certain personnel and other services).

F. Other Joint Ventures

Peer Review Organizations of Ohio Foundation. To Larry D. Spencer, Executive Director; April 25, 1984. (Association of nine professional Standards Review Organizations to bid for contract with HHS to serve as a Peer Review Organization for Ohio under the Medicare program).

II. FEE/PRICE AGREEMENTS AND PRACTICES

A. Relative Value Schedules/Guides

American Medical Association. To Kirk B. Johnson; dated March 26, 1996. (Dissemination of public information relating to proposed revisions to Medicare's resource-based relative value scale).

Intracorp. To Sharon B. Donzis, Esq.; March 25, 1988. (Cost-containment service to use physician-developed RVS to determine UCR price screens).

The Equitable Life Assurance Society. To Jonathan E. Gaines, Esq., V.P. and Counsel; March 26, 1986. (Insurer to enter into contracts with hospitals for DRG-based payment; prices would apply to insurer's own business and would be available to self-funded plans that contract with the insurer for that service).

**American Society of Internal Medicine.* 105F.T.C. 505 (1985). To William G. Kopit, Esq.; April 19, 1985. (Development and dissemination of RVG by association of physicians).

B. Price Surveys

Business Health Companies, Inc. To Ralph T. Smith, Jr.; October 18, 1996. (Survey of hospital prices by third party consultant).

Dental Consultant Salary Survey. To Samuel D. Dednam, D. M.D.; May 30, 1991. (Survey of salary ranges for certified dental consultants).

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*Utah Society of Oral and **Maxillofacial** Surgeons.* To Dennis L. . Dedecker, D. D. S., Secretary; February 8, 1985. (Survey of range of fees and average fees charged by members).

c. **Insurer and Provider Price/Fee Negotiations**

Pan American Management Associates. To Robert P. Macina, Esq.; June 27, 1989. (Limited partnership between hospital and physicians to establish a PPO; physicians to be excluded from price negotiations with payers).

Association for Quality Health Care, Inc. To Cecil M. Cheves, Esq.; August 28, 1986. (Association of employers with self-funded health plans to negotiate with providers).

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California PPO. To Michael A. Duncheon, Esq.; March 17, 1986. (Proposal by PPO composed of multiple hospitals and physician organizations to negotiate contracts with third-party payers).

*Private **Healthcare** Systems.* To Michael L. Denger, Esq.; September 24, 1985. (Proposal by an insurer to develop a proprietary national

network of managed health care systems and to function as a joint purchasing agent for commercial health insurers).

Medics/ Society of the County of Erie. To James F. Phillips, M. D., President; March 12, 1984. (Medical society discussions with third-party payers regarding fee allowances).

D . **Robinson-Patman Act**

1. **Pharmaceutical Pricing Practices**

Henry County Memorial Hospital. To Clifton E. Johnson, Esq.; April 10, 1997. (Sales of pharmaceuticals by non-profit hospital to patients of the hospital's PHO).

North Ottawa Community Hospital. To Sheldon Klein, Esq.; October 22, 1996. (Sales of pharmaceuticals by non-profit hospital to unaffiliated, non-profit hospice).

North Mississippi Health Services. To Bruce J. Toppin, Esq.; October 3, 1996. (Sales of pharmaceuticals by non-profit medical center to retired employees).

Valley Baptist Medics/ Center. To Daniel L. Wellington, Esq.; September 19, 1996. (Sales of pharmaceuticals by non-profit medical center to medical center operated clinic).

William W. Backus Hospital. To Robert M. Langer, Esq.; June 11, 1996. (Sales of pharmaceuticals by non-profit hospital to related non-profit clinics).

Elkhart General Hospital. To Clifton E. Johnson, Esq.; June 13, 1994. (Sales of pharmaceuticals by non-profit hospital to hospital operated home health care program).

**Presentation Health System.* To Tamara D. Lee, Esq.; December 21, 1993. (Sales of pharmaceuticals by non-profit hospitals to related non-profit long-term care facilities).

Unnamed hospital. To James D. Miller, Esq.; March 31, 1993. (Non-profit hospital purchase of drugs to be dispensed to HMO members and to members of a senior citizens' program).

Oneida City Hospital. To Linus W. Walton, Esq., City Attorney; June 1, 1992. (Sale of prescription drugs by a city-operated hospital to city employees at a price reflecting discounts received by the hospital).

2. Other Products

Independent Video Services. To Bonnie B. Larson, Marketing Manager; January 17, 1990. (price differences in sale Of educational video programs to physicians and hospitals).

Louisiana Health Care Ass'n. To Steven E. Adams, J. D., Director of Governmental Relations; April 23, 1982. (Group purchasing agreement for nursing home association's members).

E. Other Pricing Practices

Maine Medics/ Ass'n. To Frederick C. Holler, M. D., President; May 14, 1984. (Physician association to urge members to freeze fees or to lower fees by a given percentage).

III. PEER REVIEW

A. Fee Review

**American Medical Ass'n. (7994).* To Kirk B. Johnson, General Counsel; February 14, 1994. (Professional society peer review of physicians' fees: required physician participation in advisory fee review; medical society discipline for fee-related conduct).

National Capital Society of Plastic and Reconstructive Surgeons. To Robert J. Wilensky, M. D., President-Elect; April 23, 1991. (Physician panel to render advisory opinions regarding fee disputes).

Academy of Ambulatory Foot Surgery. To Andrew K. Do lan, Esq.; July 31, 1987. (Professional association assistance to third-party payers in determining when foot surgery may be restricted to less expensive outpatient settings).

Passaic County Medics/ Society. To William T. McGuire, Executive Director; January 3, 1986. (Professional society peer review of physicians' fees that is mandatory and binding on the physician).

Tarrant County Medical Society. To Lynn C. Perkins, M. D., president; July 11, 1984. (Medical society advisory fee review program for the voluntary resolution of disputes).

American Podiatry Association. To Werner Strupp, Esq.; March 13, - 1984. (Use of HCFA's Medicare fee profile by society as reference aid in reviewing reasonableness of disputed fees).

American Podiatry Association. To Norman Klombers, DPM, Executive Director, and John Grad, Esq., General Counsel, Podiatry Society of Virginia; August 18, 1983. (professional society advisory peer review of fees, utilization, and quality of care).

***Iowa Dents/Ass'n.** 99 F.T. C. 648 (1982). To Peter M. Sfikas, Esq.; April 8, 1982. (Voluntary and advisory professional society peer review of dentists' fees).

B. Quality and Utilization Review

Foundation for the Accreditation of Hematopoietic Cell Therapy. To Paul L. Yale; April 17, 1997. (Standard-setting and accreditation program for organizations involved in medical or laboratory practice related to hematopoietic progenitor cell therapy).

Washington Health Care Ass'n. To Stephen J. Maag, Director of Legal and Regulatory Affairs; February 16, 1988. (Nursing home association program to evaluate the quality of care provided by nursing homes).

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Virginia; August 18, 1983. (professional society advisory Peer review of fees, utilization, and quality of care).

**Rhode Island Professional Standards Review Organization. 101 F.T.C. 1010 (1 983). To Edward J. Lynch, Executive V. P.; May 9, 1983. (Physician organization nonbinding peer review for private employers' health benefits programs).*

Iv. PROFESSIONAL CODES OF ETHICS

Suffolk County Dents/ Society. To Steven L. Roberts, DDS, President, and Albert A. Sunshine, DDS, Chairman, Ethics Committee; July 6, 1994. (Legality of "exclusive dental plans"; proposed dental society disciplinary action against dentists sponsoring such plans).

American Society of Cataract and Refractive Surgeons. To Jerald A. Jacobs, Esq.; September 20, 1990. (Advisory advertising guidelines).

*American **Intra-Ocular** Implant Society.* To Jerald A. Jacobs, Esq.; October 11, 1985. (Development of standard disclosure protocol for intraocular lens manufacturers who offer inducements to physicians).

North Carolina Chiropractic Ass'n. To Collin M. Haynie, D. C., Chairman, Ethics Committee; February 29, 1984. (Code of ethics provisions regarding advertising, prior approval of advertising, and fee discounts).

**American Academy of Ophthalmology, 101 F.T.C. 1018 (1983). To Jerald A. Jacobs, Esq.; June 17, 1983. (Code of ethics provisions regarding delegation of services to non-physician health care providers, arrangements for postoperative care, use of experimental procedures, and advertising).*

v. MARKET ALLOCATION

Wichita Area Chamber of Commerce. To F. Tim Wits man, President; May 22, 1991. (Collective allocation by hospitals of services, equipment, or facilities).

VI. EXCLUSIVE DEALING AND OTHER POTENTIAL BARRIERS TO NEW ENTRY

A. Exclusive Dealing

HMO/IPA. To Gilbert M. Frimet, Esq.; March 22, 1984. (Use by IPA of fee schedule to allocate cavitation payment among participating physicians; proposal to require exclusive dealing by IPA members with the IPA).

****Burnham Hospital.*** 101 F.T.C. 991 (1983). To Robert E. Nerd; February 24, 1983. (Grant to physician group of exclusive right to offer radiology services at a hospital).

B. Other Potential Barriers to New Entry

Benedictine Health Centers. To Patrick M. Sheller, Esq.; July 10, 1991. (Hospital offer of free office space to newly recruited physicians).

Kitsap Physicians Service. To William G. Kopit, Esq.; May 22, 1984, and March 26, 1984. (Proposal by physician-owned IPA/HMO with most of the local physicians as participants to close off access to plan to new/additional physicians).

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1984

Tarrant County Medical Society. To Lynn C. Perkins, M. D., President; July 11, 1984. (Medical society advisory fee review program for the voluntary resolution of disputes).

Maine Medical Ass'n. To Frederick C. Holler, M. D., President; May 14, 1984. (Physician association to urge members to freeze fees or to lower fees by a given percentage).

Peer Review Organizations of Ohio Foundation. To Larry D. Spencer, Executive Director; April 25, 1984. (Association of nine Professional

Standards Review Organizations to bid for contract with HHS to serve as a Peer Review Organization for Ohio under the Medicare program).

Kitsap Physicians Service. To William G. Kopit, Esq.; May 22, 1984, and March 26, 1984. (Proposal by physician-owned IPA/HMO with “most of the local physicians as participants to close off access to plan to new/additional physicians).

HMO/IPA. To Gilbert M. Frimet, Esq.; March 22, 1984. (Use by IPA of fee schedule to allocate cavitation payment among participating physicians; proposal to require exclusive dealing by IPA members with the IPA).

American Podiatry Association. To Werner Strupp, Esq.; March 13, 1984. (Use of HCFA’S Medicare fee profile by society as reference aid in reviewing reasonableness of disputed fees).

Medical Society of the County of Erie. To James F. Phillips, M. D., President; March 12, 1984. (Medical society discussions with third-party payers regarding fee allowances).

North Carolina Chiropractic Ass’n. To Collin M. Haynie, D. C., Chairman, Ethics Committee; February 29, 1984. (Code of ethics provisions regarding advertising, prior approval of advertising, and fee discounts).

1983

American Podiatry Association. To Norman Klombers, DPM, Executive Director, and John Grad, Esq., General Counsel, Podiatry Society of Virginia; August 18, 1983. (Professional society advisory peer review of fees, utilization, and quality of care).

**American Academy of Ophthalmology, 101 F.T.C.1018 (1983).* To Jerald A. Jacobs, Esq.; June 17, 1983. (Code of ethics provisions regarding delegation of services to non-physician health care providers, arrangements for postoperative care, use of experimental procedures, and advertising).

Health Care Management Associates. 101 F.T.C. 1014 (1 983). To Irwin S. Smith, M. D., President; June 7, 1983. (PPO organized by an independent intermediary between physicians and payers).

**Rhode Island Professional Standards Review Organization, 101 F.T.C. 1010 (1983). To Edward J. Lynch, Executive V. P.; May 9, 1983. (Physician organization nonbinding peer review for private employers' health benefits programs).*

****Burnham** Hospital. 101 F.T.C. 991 (1983). To Robert E. Nord; February 24, 1983. (Grant to physician group of exclusive right to offer radiology services at a hospital).*

1982

Louisiana Health Care Ass'n. To Steven E. Adams, J. D., Director of Governmental Relations; April 23, 1982. (Group purchasing agreement for nursing home association's members).

****Iowa** Dents/Ass'n. 99 F.T.C. 648 (1982). To Peter M. Sfikas, Esq.; April 8, 1982. (Voluntary and advisory professional society peer review of dentists' fees).*